

agreed, that in the event of her surviving him, the debt should be satisfied out of the estate, before the claim for dower should attach. The Chancellor then said :]

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It seems not to be denied, and indeed the highest court in this state is understood to have decided, that where lands are sold to satisfy the lien of the vendor, and a surplus remains, the wife is only entitled to an allowance out of such surplus, but it is insisted, that her right is not to be thus restricted, where the lien is of any other description. The act of assembly, however, makes no discrimination between the lien of the vendor and other liens. It says, "such right of dower shall not operate to the prejudice of any claim for the purchase money of such lands, or other lien on the same." This other lien, if by the act of the husband without the concurrence of the wife, must, it is said, have reference to liens created prior to the marriage, and this it is thought is the sound construction. But if the wife does concur, by uniting in the mortgage, or relinquishing her dower, the lien must be attended with the same consequences, as if created before the marriage, or residing in the vendor for the security of the purchase money.

The legislature, it is supposed, intended to give the wife dower only in the interest remaining in the husband, after satisfying the vendors' lien, or other lien existing prior to the marriage, or created afterwards, with her concurrence ; as, otherwise, it is not difficult to imagine cases in which much prejudice might be inflicted upon creditors.

Suppose in this case there had been no surplus proceeds of sale, after satisfying the mortgage debt, but the mortgagor had owned other real estate which had been sold for the purpose of paying general creditors, or for partition among the heirs ; would the widow have been entitled, out of the proceeds of such sale, to receive not only her proportion of them but her proportion of the proceeds of the mortgaged lands ? It could, I think, hardly be contended.

Or could she, if she applied for an assignment of dower in the other lands, have asked, that she should receive a share of